



**MANAGEMENT AND
PREVENTION OF
SEXUAL HARASSMENT
POLICY GUIDELINES**

SAHA

GAUTENG DEPARTMENT OF HEALTH

SEXUAL HARASSMENT POLICY

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DEFINITIONS

Department	refers to a Provincial Department as defined in section 1 of the Public Service Act, 1994
Employee	is as defined in the Labour Relations Act, 1995 and means: Any person, excluding an independent contractor, who works for the State and who receives, or is entitled to receive any remuneration.
Management	refers to supervisors, managers as well as individuals in the Province who are tasked with the responsibility of managing people in their units/departments.
Members of the Public	would include but not limited to the following: Patients at hospitals, it is intended to cover all individuals who are not employees of the department.
GDOH	refers to the Gauteng Department of Health
Remuneration	means any payment in money or kind, or both money and kind, made or owing to any person in return for that person working for the state.
Unwelcome	refers to behavior that is uninvited or unsolicited by the recipient.
Sexually Explicit Pictures	are pictures that are offensive. These would include nudity, pornography etc. These would not include pictures, posters etc that are displayed as part of an educational campaign.

1. INTRODUCTION

Gauteng Department of Health (GDOH) is committed to creating and maintaining a work environment where all employees, irrespective of race, gender, religion, social status and sex are free from all forms of exploitation, harassment, bullying and intimidation. It is therefore imperative for every member of staff to know in no uncertain terms that GDOH, is strongly opposed to and will have a zero tolerance to sexual harassment

Our Department will respond promptly and efficiently to reports of sexual harassment and will take appropriate action to prevent, correct and discipline behavior that violates the provisions of this policy.

2. SCOPE

This policy applies to:

- All employees employed by GDOH i.e. temporary and casual staff
- Prospective employees (applicants)
- Students and interns
- Contractors, vendors
- Patients.

3. WHAT IS SEXUAL HARASSMENT?

Sexual harassment may be defined as any verbal or physical conduct of a sexual nature that offends, humiliates, embarrasses, intimidates and causes distress to any person in the same circumstance. It is behavior that is unsolicited, unwelcome and unreciprocated.

3.1 *Kinds of sexual harassment*

Quid pro quo ("This for that")

- This may occur in a relationship where the harasser has more formal power than the victim. The harasser may make sexual demands in exchange for providing higher remuneration, promotions, merit rating, for the victim

3.2 *Hostile environment*

This is the most common form of sexual harassment in which the victim's work opportunities are compromised by the prevalence of unwanted behavior however a documented pattern must be shown in order to take legal action.

Aural

- Sexually orientated comments on physical appearance

Physical

- Deliberate or unwanted physical contact such as kissing, patting, slapping, pinching or brushing against another's body
- Sexually offensive written, telephonic or electronic communications.
- Sexual violence, including sexual assault

Visual

- Offensive displays of sexually suggestive, sexually explicit pictures i.e. erotic or pornographic material

Sexual harassment may occur in hierarchical relationships or between peers or between people of the same sex or opposite sex.

In determining whether the reported incident constitute sexual harassment, consideration shall be given to the record of the conduct as a whole and in the totality of the circumstances, including the context in which it occurred.

4. WHAT IS *NOT* SEXUAL HARASSMENT?

A normal mutual attraction between individuals is excluded from this definition. It is unlikely for sexual harassment to happen where behavior is mutually acceptable to parties involved. It is however important for staff in any personal relationships, whether with other staff to act professionally at all times.

5. PRINCIPLES

The GDOH aims to create and maintain a working environment in which the dignity of employees is respected. It also aims to create a climate in the workplace in which victims of sexual harassment do not feel compromised.

The Department shall strive to achieve the following:

- 5.1 That all employees should refrain from committing acts of sexual harassment. Annexure A of the Disciplinary Code expressly lists sexual harassment as misconduct.

- 5.2 All employees have a role to play in contributing towards creating and maintaining a work environment which is free from sexual harassment
- 5.3 Employees should ensure that their standards of conduct do not cause offense to fellow employees. They should discourage unacceptable behavior on the others.
- 5.4 Management should attempt to ensure that the Department and its employees do not subject persons such as members of the public i.e. patients, suppliers, job applicants and others who have dealings with the Department, to sexual harassment.
- 5.5 Management is required to take appropriate action in accordance with this Policy, when instances of sexual harassment, which occur within the workplace, are brought to their attention.

6. The Gauteng Department of Health shall:

- 6.1 Ensure that the policy is communicated to all its employees through orientation and induction programmes, news letters and is distributed to all its institutions
- 6.2 Implement the policy effectively, and
- 6.3 Take disciplinary action against those employees who do not comply with the policy.

7. PROCEDURE

7.1 Advice and assistance

Sexual harassment is a sensitive issue and a victim may feel unable to approach the perpetrator, lodge a formal grievance, or turn to colleagues for support. Victims of sexual harassment should contact their Supervisor if he/she is not the perpetrator, Employee Assistance Programme (EAP) coordinators or external EAP Practitioner (ICAS).

7.2 Options to resolve a case of sexual harassment.

- The case of sexual harassment could be resolved formally or informally
 - However an employee affected should be under no duress to accept one or the other option.

7.3 Informal approach

The victim should be allowed an opportunity where she/he can explain to the perpetrator that:

- the behavior in question is not welcomed
- that it offends them or makes them feel uncomfortable
- and that it interferes with their work.

This may be done in the presence and with the assistance of the EAP coordinator / EAP Practitioner.

The option of mediation between the victim and the perpetrator should also be available as an informal approach in which to resolve the problem.

In the event that the informal approach has not yielded any positive outcome, or in severe cases such as sexual assault, rape, a strip search and *quid pro quo* harassment the victim should lodge a formal grievance.

7.4 Formal procedure

The formal procedure follows the rules as set out by the Public Service Commission.

The procedure provides that:

- The victim should lodge the complaint, in writing, directly to the Head of Department within 10 working days of the incident having occurred. The victim may seek the assistance and advice of the person designated in 7.1 above to formulate the complaint.
- Head of Department shall appoint an investigating officer to establish the facts. Upon receipt of the report from the investigating officer, the Head of Department shall make a decision based on the report and communicate his/her decision to the victim. Should there be sufficient grounds for disciplinary action against the perpetrator, the Head of Department will instruct that the necessary disciplinary action be taken against the perpetrator.

- If the case is not satisfactorily resolved within a specified period, the issue can be dealt with in terms of the dispute procedure contained below.

8. Investigation and disciplinary action

Care should be taken during any investigation of a complaint of sexual harassment that the complainant is not disadvantaged, and that the position of other parties is not prejudiced if the complaint is found to be baseless.

- The disciplinary code of conduct insofar as it relates to discipline forms an integral part of this policy. Annexure A of the code of conduct clearly sets out that sexual harassment is misconduct.
- Disciplinary action will be taken in all proven cases of sexual harassment, which have been dealt with under the formal procedure. Serious incidents of sexual harassment or continued harassment after repeated warnings are dismissible offences.

9. Anti-retaliation assurance

- This policy seeks to encourage employees and other people covered by the scope of this policy to express freely, responsibly, and in an orderly way opinions and feelings about any problem or complaint of sexual harassment.
- Any act of reprisal, including internal interference, coercion and restraint by a GDOH employee, violates this policy and will result in prompt disciplinary action.

10. Criminal and Civil charges

A victim of sexual assault has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this code.

11. Dispute resolution

- Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out above, or should the Head of Department fail to address the complaint within 20 days of receipt thereof, the victim may declare a dispute and request that a Conciliation Board be set up in terms of LRA, 1995.
- Should the Head of Department fail to convene the conciliation board within 10 days of receipt of the request therefore from the victim, the victim may refer the dispute to arbitration or to the Labour Court.
- Should the dispute remain unresolved after the Conciliation Board proceedings, either party may refer the dispute to arbitration or to the Labour Court within thirty (30) days of receipt of the certificate issued by the Conciliation Board.

12. Improper complaints

This policy shall not be used to bring frivolous or malicious complaints against any member of staff or members of public covered by this policy. If a complaint has been made in bad faith, disciplinary action will be taken against the person bringing a complaint

13. CONFIDENTIALITY

- 13.1 The Department will ensure that all grievances on sexual harassment are investigated and handled in a manner that ensure that the identities of the persons involved are kept confidential.
- 13.2 In cases of sexual harassment all parties concerned must endeavour to maintain confidentiality in the disciplinary hearing. Only the chair of the hearing, the employer representative, the victim, the alleged perpetrator, his/her representative, witnesses and an interpreter if required, must be present at the hearing.

14. SICK LEAVE

Where an employee's existing sick leave entitlement has been exhausted, the Head of Department should give due consideration to the granting of additional sick leave in cases of serious sexual harassment where the employee requires trauma counseling.

Approved



Mrs S. Ngcobo

Head of Department

Date: 30/06/09